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In the Supreme Court of the United States

No. 71-587

OWNERS OR PARTIES IN INTEREST:
FRANKLIN TOWNSHIP,
Petitioner

v.

BOROUGH OF DELMONT,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT Y. CASSOL,
101 N. Main Street,
Greensburg, Pennsylvania
15601,
Attorney for Respondent.

REDLICH, CASSOL, REDLICH & MOROCCO,
November, 1971.

Murrelle Printing Co., Law Printers, Box 100, Sayre, Pa. 18840
Mrs. Margaret Howard, Westmoreland County Representative, Court House Annex, Greensburg, Penna.

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Counter-Question Presented for Review

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Respondent

BRIEF IN OPPOSITION

Respondent prays that the application for a Writ of Certiorari to review the decision of the Supreme Court of Pennsylvania be denied.

COUNTER-QUESTION PRESENTED FOR REVIEW

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(1) Are the requirements imposed by the Fourteenth Amendment to the United States Constitution satisfied by the mailing of a notice of the entry of judgment to counsel of record?

COUNTER-STATEMENT OF THE CASE

The statement of the case set forth in the Petition for a Writ of Certiorari is essentially correct except Respondent would add as part of the factual background of the case the following:

> Notice of the entry and a copy of the opinion and order of November 2, 1969, were sent to counsel for the Township of Franklin by the Court in compliance with custom in the Westmoreland County Court, as factually found by the Commonwealth Court of Pennsylvania.

REASONS FOR NOT GRANTING THE WRIT

The matter before this Court has been decided on several occasions. The cases cited in Petitioner's brief in effect substantiate the position of the Respondent. The case of *Nixon v. Nixon*, 329 Pa. 256, 198 A. 154 (1938), sets forth the law in the Commonwealth of Pennsylvania. The Court carefully pointed out that the controlling factor is whether the notice was sent as distinguished from the irrelevant fact of whether or not the Appellant received the notice. The Court said in this regard, at page 262: "But, it must be understood that, if it appears of record that the prothonotary's office sent a postal notice, this will satisfy all requirements of the custom and cannot be disputed."

The Court did, however, acknowledge the possibility of deviating from this rule in certain rare situations. The Court said in this regard, at page 260: "The occasion must be extraordinary and must involve fraud or some breakdown in the Court's operation through a default of its officers."

In the case at bar, the Commonwealth Court, in its opinion, found as a fact that no breakdown occurred in the customary manner of providing such notice. The affidavit of the opinion writer's secretary indicates that she, in compliance with custom in Westmoreland County, sent notice in this case to all counsel of record. The Commonwealth Court of Pennsylvania was satisfied that the criteria as set forth in *Nixon v. Nixon*, supra, was met.

Reasons for Not Granting the Writ

The cases cited in the original petition are factually distinguishable from the case at bar. In all of those cases it appears that no notice of the entry of judgment was ever sent to counsel of record. The case of *Hill v. Hawes*, 320 U.S. 520, 64 S. Ct. 334, 88 L. Ed. 283, rehearing denied, 321 U.S. 801, 64 S. Ct. 515:

> "It may well be that the effect to be given to the rule is that, although the judgment is final for other purposes, it does not become final for the purpose of starting the running of the period for appeal until notice is *sent* (emphasis supplied) in accordance with the rule."

A reading of the decisions of this Court lead to the inescapable conclusion that there is no violation of the Fourteenth Amendment to the United States Constitution when notice of the entry of judgment has been sent to counsel of record.

CONCLUSION

For the foregoing reasons, the Respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

REDLICH, CASSOL, REDLICH & MOROCCO,
ROBERT Y. CASSOL,
Attorneys for Respondent.